83-1305

FILED
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ALEXANDER L. STEVAS
CLERK

No.

In the
Supreme Court of the United States
October Term, 1983

DAVID WILLARD BUCHANAN,
Petitioner,

vs.

MERIT BOARD OF THE STATE UNIVERSITIES CIVIL SERVICE SYSTEM OF ILLINOIS, THE UNIVERSITY OF ILLINOIS AND THE STATE OF ILLINOIS,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE ILLINOIS SUPREME COURT

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The Scheffer Press, Inc.—(312) 263-8850

QUESTIONS PRESENTED FOR REVIEW

1. That the Courts of Illinois used two (2) different Judical Standards one (1) for the University of Illinois and one (1) for the petitioner.

2. That the University of Illinois did not give the petitioner his Constitutional Rights in a Presupension Hearing.

3. That the University of Illinois was not always truthful in dealing with the petitioner or the Illinois Courts.

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NO._____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM,1983

DAVID WILLARD BUCHANAN

PETITIONER,

v.

MERIT BOARD OF THE STATE UNIVERSITY CIVIL SERVICE SYSTEM OF ILLINOIS, THE UNIVERSITY OF ILLINOIS AND THE STATE OF ILLINOIS

RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE ILLINOIS SUPREME COURT.

The petitioner,David Willard Buchanan, respectfully prays that a writ of certiorari issue to review the judgment of the Illinois Supreme Court entered on October 4,1983.

OPINIONS BELOW

The Illinois Supreme Court entered its Memorandum decision affirming the denial of Petitioner's motion to dismiss on October 4, 1983. A copy of the Memorandum is attached as Appendix A. There was no motion for a rehearing.

On June 17, 1983 The Appellate Court of Illinois upheld the decision of The Circuit Court Of Cook County, Illinois Appendix B.

On December 4, 1981 The Circuit Court of Cook County, Illinois affirmed the refusal of the Merit Board of the State University Civil Service system of Illinois to hear the petitioner's grievance on its merits because of the failure of the petitioner to file within fifteen (15) days of the unlawful action suggested by rule 13.1 of the Merit Board Appendix C.

> Review under 13.1 "Review by Director of Action or omission of designated

employer representative. Any action or omission, by a designated employer representative shall be the basis for a review decision by the Director, upon a timely filed written request by an applicant, a candidate or an employee. The request shall be deemed to be timely filed within 15 calendar days following the action, or omission of the action, by the employer, or as otherwise may be deemed appropriate by the Director under the circumstance."

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution, Amendment VI: In all criminal prosecutions... Public trial by an impartial jury of the state and district wherein the crime shall have been committed, which districts shall have been previously ascertained by law, and to informed of the nature and cause of the accusation...

STATEMENT OF FACTS

On March 16,1979 Jeanne Miller (Schmidt)

was promoted to a Med Tech III by the action of the Admistrative Committee .

> "Administrative Committee Meeting Minutes held Friday, March 16, 1979. Chemistry reorganization: 1. Jeanne Miller has been promoted to the MT III position in Chemistry."

This was done without following the Civil Service regulations on promotions . At this time the petitioner was number one (1) on the register for Med Tech III and Jeanne Miller was not on the register for Med Tech III. The letter from D.B.Bonham, the chancellor's representative, to David Buchanan, the petitioner, April 6,1979 is not true.

> Paul lawson acting as my designee, has investigated the circumstances surrounding your grievance which you filed with your supervisor on March 16, 1979 and whose decision was appealed by you to the Chancellor on March 23, 1979.
>
> During a discussion between you and Mr. Lawson it was determined that your concerns regarding a rumoted promotion within your department were not substantiated by the facts. You indicated to Mr. Lawson, based upon evidence presented by him, that

you wished to consider your grievance appeal to be terminated and made void.

I am officially acknowledging your re-request by means of this letter.

D.W. Bonham
/s/ Vice chancellor for
Administrative Services

This was not a rumored promotion and the petitioner never agreed to have this grievamce terminated and made void. The petitioner then brought this illegal promotion to the attention of the Director of Personnel Service, Don Ward, letter dated April 10,1979. A hearing was given the petitioner on November 8, 1979. Also at this time Jeanne Miller was again made a Med Tech III in June 1979. At this hearing the petitioner raised the question why Jeanne Miller was allowed to take two (2) days to take the Med Tech III examination on April 9 and 10, 1979. The Med Tech III examination is a three (3) to four (4) hour test. The petitioner also asked Mr.

Ward to check with Dr. Ressler, Section Head of Clinical Chemistry. Dr Ressler would have verified that Jeanne Miller had been working as a Med Tech III since March 16, 1979 to August 1982 when she retired. Mr. Ward never did answer the petitioner question or talked to Dr. Ressler. Unfortunately, Mr. Ward does not make records of his hearings. Even the University of Illinois does not make correct statements. In the University brief November 5,1981 page two (2) paragraph one (1) to the Circuit Court Of Cook County, Illinois, said that Julia E. Dwyer, secretary of the Administrative Committee, was a Clerk I.

> "Plaintiff has pinned his case on an erroneous and corrected entry in the minutes of the Administrative Committee kept by Julia E. Dwyer, a Clerk I".

In fact Ms. Dwyer is a Med Tech III and has been since the petitioner has known her from July 1975 to present. Even the corrected minutes of the March 16, 1979 meeting which

were made on April 27, 1979 are not correct.

> "Administrative Committee Meeting Minutes of meeting held Friday, April 27, 1979. Correction of March 16 minutes: It was noted that Item 1 Under "Chemistry reorganization" has been changed to read "Jeanne Miller has been appointed as overall supervisor of general chemistry"."

By definition, the overall supervisor of General Chemistry Section is a Med Tech III. And why did it take the University of Illinois so long to correct the minutes of March 16, 1979? There were two (2) other Administrative Committee Meetings on March 23, 1979 and March 30, 1979 before the April 27, 1979 meeting .

While the petitioner was on vacation in August 1979 he was made Evening Supervisor for Blood Bank effective September 4, 1979. This changed the petitioner work schedule from the day shift to the evening shift, 4 PM to 12:30 AM. The letter that changed the petitioner schedule was dated August 24,1979

and the petitioner filed a grievance on August 29, 1979. The petitioner was only given one (1) week notice of the work change, another violation, for one (1) week is not a reasonable advance notice according to Civil Srevice Chapter VIII Rule 8. This was settled by Don Ward in January 1980 by transfering the petitioner from Blood Bank to the day shift in Special Chemistry where the petitioner is presently working. Also while the petitioner was on vacation in August 1979 a letter was received by the petitioner's supervisor complaining about the petitioner's job performance. Again the petitioner did not receive this letter until August 27,1979 when the petitioner came back from vacation. The petitioner filed a grievance on August 29, 1979 and this grievance was sustained by the Chancellor's representive, D.W. Bonham on September 26, 1979. The petitioner only mentions this grievance to show the harassment.

The petitioner received a letter on October 23, 1979 telling the petitioner to report on October 25, 1979 for a presuspension hearing.

> "This is to advice you that you are to report to Room 310, A.O.B. at 4:00 P.M. on Oct. 25, 1979.
>
> This meeting will be a presuspension hearing meeting with Mr. Walsh of Labor Relations. You may have your represtative present at this meeting.
>
> Harold Williams
> /s/ Medical Technologist III

The petitioner was not told the charges being brought against him and even if the petitioner had been told the charges, two (2) days is not enough time to prepare a proper defense. Fifteen (15) minutes after the presuspension hearing started the petitioner was suspended for three (3) days. The first time the petitioner could see or hear the charges being brought against him were in the first few minutes of the presuspension hearing. This hearing was nothing but a Kangaroo court. The whole procedure not only violated the

petitioner's University Civil Service Rights but the petitioner's Constitutional Rights according to Amendment VI. The petitioner then filed a grievance dealing with the suspension on October 31, 1979 There are still some questions that have not been answered in the petitioner letter of April 21, 1980 to Don Ward .The University is mistaken as to who was working the evening of October 16, 1979 when the petitioner cross-matched six (6) units of blood, one (1) of the units being from a paid donor. The University has not checked the records as the petitioner suggested in his letter dated April 21, 1980 to Don Ward. Also in this same letter, the petitioner asked the University to check on how the purchased blood was stored. Again the University failed to answer this question. Don Ward's answer to the question of a Kangaroo Court does not

make sense, letter from Don Ward to David Buchanan dated October 27, 1980 paragraph three (3).

> "While I do not believe that your civil service rights have been violated, I will agree with you that the procedure for conducting a hearing serving your suspension did not provide adequet time for your respponse. However, you were given adequate time before investigation at the Chancellor level and at the University Director level of the grievance procedure. Because you and other employees, although treated equally, have complained about the current procedure, I have directed our employee relations personnel to change the procedure. The new procedure will provide a counseling session with the employee and will provide adequate time for the employee to formulate a response prior to the time a suspension is served. A copy of the procedure is available from Jim walsh or Greg Parran in Labor Relations Office."

What he said was the University has the right to kill the petitioner and if he did not like it he could appeal. Mr. Ward also said that the petitioner was not the only one be unjustly treated. The courts have raised the

questioin of the time involved in hearing the suspension grievance. The petitioner does not think the courts realized or took into consideration that there were more than one (1) grievance being heard. Please again note the letter dated October 27, 1980 from Don Ward to David Buchanan , the first paragraph in which Mr. Ward said he lost the petitioner's letter of April 12, 1980.

> "I must apologize for my failure to respond to your letter of April 21, 1980, at an earlier date. I do not understand why but I did misplase your communication. I appreciate your bring this to my attention."

The University has thirty (30) days to answer the petitioner's letter of April 12, 1980, according to Civil Service Rule Chapter VII D.1 which reads :

> "Univeersity director: Upon receipt of an appeal, the University Director of Personnel Service shall offer a fair hearing to all interested persons, shall make any additioinal investigation that he/she feels is needed (including where appropriate a referral

> back to the department), and shall issue a written decision on the grievance within thirty calender days after receipt of the appeal."

The courts have completely overlooked this point.

The last two (2) situations concern a supervisory position in Special Chemistry. Two grievances were filed on June 18, 1980. Ethelle Katz was made supervisor in Special Chemistry over the petitioner while she was still on probation as a Med Tech II. The petitioner is ten (10) years senior to her in pay grade and the petitioner should have been given a chance at the supervisory position. The petitioner had a conversation with Dr. Egil Fosslien, Director of Hospital Laboratories, in his office about the supervisor position in Special Chemistry. Dr. Fosslien asked the petitioner if he was going to file a grievance .The petitoiner's answer was probably. Dr. Fosslien then said "If you do

it will be bad trouble for you". Unfortunately only Dr. Fosslien and the petitioner were the only people in his office at this time. Dr. Fosslien has denied he ever made or implied this statement. Just because Dr. Fosslien is a Medical Director does not make his word any better than the petitioner's. Again this is more harassment.

CONCLUSION

The University of Illinois is suppose to do everything in its power to guarantee both the petitioner's University Civil Service and his United States Constitutional Rights. They have done neither. The whole tone of the petitioner's grievances was set by the Chancellor's representive, D.W. Bonham, letter to David Buchanan dated April 6, 1979. Instead of trying to protect the petitioner's Civil Service Rights the University of Illinois did everything in its power to have

the petitioner's grievance terminated and said the petitoner agreed to this termination. This is an outright lie. The University of Illinois has told the petitioner that they do not have to follow the United States Constitution. The University says it is alright to give one of its employees a trial and not tell him the charges being brought against him until after the trial has started. What makes this worse is that the Courts of Illinois including the Supreme Court of Illinois agree with this conduct. When one does complain about these practices The University of Illinois then turns around and any way it can it will harass their employess. The petitioner has shown this harassment by the way the University has treated him. About procedure, The University of Illinois has crucified the petitioner for being a few days late on filing an appeal to a grievance but the University can be four

(4) months late and that is just alright because the University lost a letter. Where is the justice here? If it makes any difference, the reason the petitioner was late is because of his changing attorneys at the time the appeal should have been filed. No person should have to go through what the petitioner has been through especially in the United States. If the Illinois Courts will not correct this injustice, where does the petitioner go? Does the petitioner quit his job and move out of the State of Illinois. This might help the petitioner but it does not solve the problem. The only way the petitioner knows of solving this injustice is for this court to accept this petition. It should not make any difference that the petitioner is just an individual fighting for justice against the powerful and "uncorruptable" University of Illinois. Where does the petitioner go to get justice?

Are the courts telling the petitioner that this is the status quo and it can not be changed even though it is unjust. Again what makes this situation worse is that it was done by The State of Illinois and condoned by the Illinois' Courts. The petitioner is asking The United States Supreme Court to over rule The Supreme Court of Illinois and allow this case to be heard on its merits.

Thank you for listing to the petitioner and may God be with you.

ORGINALLY DATED December 27, 1983
REVISED DATE February 6, 1984

Respectfully submitted

David Willard Buchanan

DAVID WILLARD BUCHANAN
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Telephone:
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The petitioner

APPENDICES

LLINOIS SUPREME COURT
JULEANN HORNYAK,CLERK
Springfield, Ill. 82706
(217) 782 2035

October 4, 1983

Mr. Gerald A. Goldman
Goldman and Marcus
69 W. Washington, S#2252
Chicago, Il 60602

No. 58739 - David Buchanan, petitioner, vs. Robert J. Lenz, et al., respondents. Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

Very truly yours,

/s/
Clerk of the Supreme Court

P.S. The Mandate of this Court will issue to Appellate Court on October 26, 1983.

Fifth Division
June 17, 1983

82-53

David Buchanan, Plaintiff-Appellant v. ROBERT J. LENZ, EDWARD R. DONOGHUE, IVAN A. ELLUOTT, JR., CLARA FITZ-PATRICK, EVELYN KAUFMAN, PAUL STONE, MERIT BOARD OF THE STATE E.G. PETERSON and THE UNIVERSITY OF ILLINOIS, Defendants-Appellees.	)	APPEAL FROM THE CIRCUIT COURT OF COOK COUNTY HONORABLE JAMES C. MURRAY, Presiding

JUSTICE MEJDA delivered the opinion of the court:

Plaintiff requested the Merit Board of the State Universities Civil Service System of Illinois (Merit Board) to review certain employment decisions of defendant University of Illinois (University). The Merit Board refused review for plaintiff's failure to file the request within the peroid provided by Rule 13 of the Civil Service Rules (Rules). Plaintiff filed the instant complaint for administrative review of the decision of the Merit Board. Plaintiff now appeals from the order of the circuit court affirming the decision.

The issues on appeal are: (1) whether the trail court erred in affirming the Merit Board's decision; and (2) whether the decision of the Merit Board is subject to judicial review as to the merits od plaintiff's charges.

Plaintiff is empolyed by the University of Illinois Hospital as a Medical Technologist II. On March 16,1979, he filed a grievance charging that the University failed to follow the prescribed procedure for appointment to fill an open position and instesd, through supervisory personnel, appointed Jeanne Miller to Medical Technologist III. Plaintiff argues that appointment constituted a promotioon and thus violated the Rules and Illinois statute. (Ill. Rev. Stat. 1981, ch. 24 1/2, par. 38b9.) The grievance was considered by various individuals within the University internal grievance procedure. Finally, on May 30, 1979, the University Director of Non-academic Personnel (University Directot) denied plaintiff's original grievance based on its prior consideration and further information obtained at a hearing held May 10, 1979. Review of the

University Director's decision was requested of the Diredtor of the Merit Board (Director) who replied that he foun no official personnel action had been taken regarding the allegedly improper promotoin of Jeanne Miller. Plaintiff thereafter sent a request for review to the Chairman of the Merit Board. The Secretary of the Merit Board responded that the record showed no official action which constituted a violationas alleged. On August 10, 1979, plaintiff again appealed to the Secretary of the Merit Board who again replied that there had been no violation and refferred plintiff's request for consideration of his grievance back to the University Director. On August 20, 1979 the University Director for the second time stated that he found no evidence of any violation. following a subsequent hearing the University Director denied the grievance for the third time on November 27,1979, again stating that a review disclosed no evidence of a violation.

On December 11,1979, Michael Wallace, Staff Counsel for the Illinois State Employees Association, on plaintiff's behalf filed a request for

review of the November 27 decision with the Director of the Merit Board, presumably under Rule 13.1. On Decmeber 14,1979, the Director advised plaintiff that he found no statutory of rule violation. The record shows no request for review of this decision under Rule 13.2. The decisions of defendent University were restated by its president in a series of letters written on June 16, 1980, to Wallace and to several state legislators.

On November 25, 1980, plaintiff filed with the Director of the Merit Board a "formal appeal" wherein he described the alleged unfair employment practices of the University and his efforts to correct them and requested review of the various decisions made by the University Director. On December 3,1980, the Director of the Merit Board denied review on the ground thet the 15-day period within which a request for review under Rule 13.1 could be filed had passed and that further review would therefore not be proper. Plaintiff appealed this decision to the Merit Board under Rule 13.1. The appeal was rejected by letter of the Merit Board dated Dec-

ember 16,1980, which stated:

> "Reference your letter of December 9, 1980 concerning a request for review under Civil Service Rule 13.2.
>
> "Civil Service Rule 13.2 states in part: 'An applicant, a candidate, an employee, or an employer, affected by a Review Decision of the Director under Rule 13.1, *** '
>
> "Since your request for review via Civil Service Rule 13.1 was untimely filed on November 25,1980 because of an action or omission of an action on or abuot June 24, 1979, no Director's Review Decision under Rule 13.1 was rendered.
>
> "Therefore, there can be nothing before the Merit Board in thes matter."

Plaintiff thereupon filer the instant complaint for administrative review and briefs were filed. The circuit court found that although plaintiff raised substantial questions as to the procedure involved, the issue is the matter of timeliness of the filing before the administrative agency and that it was without jurisdiction to reverse the decision of the adminstrative agency. The court entered judgment to affirm the Merit Board decision.

OPINION

Plaintiff appeals form the order of the trial

court entered December 4, 1981, which he characterizes as "dismissing plaintiff's cause of action for lack of jurisdiction to review tha Administrative Agency's decision to dismiss plaintiff's cause for failure to timely file his grievance before the Administrative Agency." Plaintiff first contends that the circuit court erred in stating that it lacked jurisdiction to reverse the decision of the administrative agency. We find this contention without merit.

The trial court here appealed from provides:

> "The Court, having read the briefs and heard oral argument, finds that although the brief of Plaintiff raises substanital questions in the Court's mind as to the procedure involved, the issue is on the matter of timeliness of the filing before the Administrative Agency and the Court is without jurisdiction to reverse the decision.
>
> "It Is Therefore Ordered that the decision fo the Administrative Agency is affirmed.
>
> "The Court finds no just reason for delay of enforcement or appeal."

The Administrative Review Act(Ill. Rev. Stat. 1981,ch.110, par. 3-101 et seq.) which is applicable to the proceedings for review of Merit Board decision (Ill. Rev. Stat. 1981,ch. 24 1/2,

par.38b14) vests jurisdiction in the circuit court for review of finsl administrative decisions (Ill. Rev. Stat. 1981,ch 110, par. 3-104) and expressly vests the court wirh power "to affirm or reverse the decision in whole or in part" (Ill. Rev. Stat. 1981, ch. 110 par. 3-111(a)(5)). Ordinarily , a court lacking subject matter jurisdiction of a case has only to dismiss the case. (Glasco Electric Co. v. Department of Revenue (1980),87 Ill. App. 3d 1070, 409 N.E. 2d 511.) It is significant that the trial court in fact did not dismiss the case but entered a ruling affirming the administrative decision.

"Jurisdiction' is often used ambiguously. In its stricter sence, it is used only to mean judicial authority over the subject matter and parties. [Citation.] in its broader sence, it also includes the privileges and power to grant specific relief in cases within such authority." (Lake Wauwanoka, Inc. v. Spain (Mo.App. 1981), 622 S.W. 2d 309, 314.) In the instant case defendant did not allege lack of jurisdiction of the parties or of the subject matter and admitted

in its answer that plaintiff was entitled to judical review of the administrative decision. The trial court did not dismiss plaintiff's complaint for administrative review but instead read the briefs, considered oral arguments and affirmed the decision of the administrative agency. In light of these facts we construe the finding that "the court is without jurisdiction to reverse the decision" to indicate that the record did not entitle plaintiff to the relief prayed for in his complaint for administrative review, namely, his prayer that the decision be reversed.

It is well settled that a judgment will be affirmed if it is justified in law for any reason or ground appearing in the record regardless of whether the particular reasons given by the trial judge, or his specific findings, are correct or sound.(Stigler v. City of Chicago (1971), 48 Ill. 2d 20, 268 N.E.2d 26; Thornton v. Williams (1980), 89 Ill. App. 3d 544, 412 N.E.2d 157.) "The ressons given for a judgment order, or the findings upon which it is based, are not material if the judgment or order is correct." (Keck v. Keck

(1974),56 Ill. 2d 508, 514, 309 N.E. 2d 217,220.) moreover, only the decretal portion of a judgnemt is operative as a judgment; the rights of the parties are agjudicated by that portion alone and not by the recitals. (First State Bank & Trust Co. of Handover Park v. Stackler (1981), 93 Ill. App. 3d 619, 417 N.E. 2d 795; Stewart v. Stewart (1975), 35 Ill. App. 3d 236, 341 N.E.2d 136.) The decretal portion of the order of the circuit court adjudicated the rights of the parties and thereby affirmed the decision of the Merit Board. The propriety of the court's affirmance is, there fore, the issue before us of appeal.

The Merit Board is authorized to promulgate and apply rules for personnel administration of the University of Illinois. (Ill. Rev. Stat. 1981,) under Rule 13 actions or omissions of the Univ-ersity may be subject to a review decision first by the Merit Board Director (Rule 13.1) and then by the Merit Board (Rule 13.2). Rule 13, in per-tinent part, provides as follows:

> "13.1 Review by Director of Action, or Omission, of Designated Employer Repre-sentative. Any action, or omission, by

> a designated employer representative shall be the basis for a review decision by the Director, upon a timely filed written request by an applicant, a candidate, of an employee. The request shall be deemed to be timely filed if filed within 15 calendar days following the action, or omission of the action, by the employer, or as otherwise may be deemed appropiate by the Director under the Circumstances. ***
>
> 13.2 Review by Merit Board of Review Decision of Director. An applicant, a candidate, an employee, or an employer, affected by a Review Decision of the Director under Rule 13.1, may file a written request with the Secretary for the Merit Board for a Merit Board review of the Director's Review Decision, ***."

We agree with plaintiff's assertion that the 15-day time period expressed in Rule 13 is not mandatory but discretionary; the language of the rule itself so states. The courts will not interfere with the discretionary authority vested in administrative bodies unless such authority is exercised in as arbitratry of capricious manner. (People ex rel. Stephens v. Collins (1966), 35 Ill. 2d 499, 221 N>E>2d 254.) As it is undisputed that plaintiff's filing was not timely, the focus of our inquiry must be whether the Merit Board's dismissal of plaintiff'f request was

arbitrary of capricious. We find that it was not.

Rule 13 provide for a review decision of an action if the request for such rewiew is filed within 15 days as otherwise deemed appropriate by the Director of the Merit Board. The Merit Board Director reviewed the May 30, 1979 decision of the University Director and the Merit Board twice reviewed that decision. Plaintiff did not request review under Rule 13.1 of the University Director's August 20, 1979 decision. Fellowing the University Director's third denial of plaintiff's grievance on November 27, 1979, plaintiff requested review under Rule 13.1 but did not request further review under Rule 13.2.

Finally, a full year later, Plaintiff requested review under Rule 13.1 of all the various decisions of the University Director. That request prompted the Director's determination that further review under Rule 13 was improper in view of the untimely filing. The Merit Board, in effect, concurred.

We find the Merit Board's final r3efusal to rehear a grievance already considered many times to

be neither arbitrary nor capricious. In finding untimeliness a bar to further consideration of plaintiff's grievance, the Director did not have before him a mere technical failure to meet a filing date or an insignificant delinquency. The Merit Board deemed the final action of the University of which the plaintiff's requested review under Rule 13.1 to have occurred on or about June 24, 1979. Under such facts plaintiff's request for review occurred 17 months after the final University action. Considering the University director's third review and decision as the final University action a full year before plaintiff's request for review under Rule 13. And if the letters sent by the University president are deemed the final University action, plaintiff's request for Rule 13 review occurred five months after the prescribed time for such request. Thus, under any set of facts, plaintiff's request occurred substantially beyond the suggested time for filing. In view of the lateness of the request, to hold that the Director of the Merit Board abused his discretion and acted arbitrarily in enforcing a 15-day time

limit would be to render the time limit a nullity. Plaintiff has made no showing that he was unable to act within the time limit and , moreover, offers no reason why the Director should have disregarded the suggested time for filing in favor of plaintiff who filed his request at least five months and as many as 17 months after the prescribed time.

" An administrative agency has the power to construe its own rules and regulations to avoid absurd of unfair results." (Modine Manufacturing Co. v. Pollution Control Board (1976), 40 Ill. App. 3d 498, 502,351 N.E. 2d 875, 879.) Deference must be given to the agency's interpretation of its own rules; the reviewing court will not overrule the agency's construction unless it is unreasonable (Brown v.Sexner (1980), 85 Ill.App. 3d 139, 405 N.E. 2d 1082) or plainly erroneous. (Modine.) In the instant case we do not find the Director's decision that plaintiff's request for review was not filed within an "appropriate" time was plainly erroneous. Nor do we find, in view of the many opportunities for review and the sub-

stantial lateness of plaintiff's filing, that the refusal to review the Director's decision was unreasonable. We, therefore, will not distrub the finding of the circuit court.

We do not reach the second issue raised by plaintiff regarding various wrongs which he asserts defendant University committed. Plaintiff appeals fomr the December 4, 1981 order of the circuit court and thr only question presented here is whether the circuit court in affirming ther decision of the Merit Board. (See Department of Mental Health & Developmental Disalilities v. Civil Service Com. (1981), 85 Ill. 2d 547, 426 N.E.2d 885.) Thus, p;aintiff's allegations against defendent University have no bearing on this appeal and, therefore, are not considered.

For the foregoing reasons, the order of the circuit court is affirmed.

Affirmed.

LORENZ and SULLIVAN, JJ., concur.

STATE OF ILLINOIS)
) SS:
COUNTY OF C O O K)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

COUNTY DEPARTMENT-LAW DIVISION

BUCHANAN	)	
	)	
VS.	)	NO. 81 L 912
	)	
UNIVERSITY OF ILLINOIS	)	

REPORT OF PROCEEDINGS taken before the Honorable Judge JAMES MURRAY, Judge of siad court, in the above-entitled cause on the 4th day of December, A.D., 1981.

PRESENT: MR. GERALD GOLDMAN,
representing the plaintiff;

MR. ROBERT REISER,
representing the University of Illinois.

THE CLERK: Buchanan versus University.

MR. GOLDMAN: Good morning, Gerald Goldman representing the plaintiff.

MR. REISER: representing the University of Illinois.

THE COURT: This matter is set for decision this morning on Mr. Buchanan's complaint for administrative review.

I have read all of the material submitted by the parties, basically the complaint for administrative review requestin a hearing by Mr. Buchanan in connection with the Civil Service rules and regulations as applied to the University's Civil Service system.

It is Mr. Buchanan's complaint that he ended up number one on the list of employees for the position of Technician, two, that ptior to his filling that position the University gave the opportunity to a joan miller to act as Medical Technologist I should call it and then she acted as Technologist and then eventually they appointed her after she had gotten experience and learned the job and was given an opportunity to take

an examination that she eventually was appointed to the position, even though he had ended up number one on the list.

And altough Mr. Buchanan raises, in the Court's mind, substantial cases of violation of the spirit of the Civil Aervice Rules, unfortunately the reason for the denial of his hearing was based upon the time requirements of the Civil Service Rules relating to the time requirement for a hearing.

And altough counsel for Mr. Buchanan makes a very able and forceful argument as to the reasons why the Court should waive those requirments in view of the substantial charges of Mr. Buchanan, the law does not permit me to do so. And I will have to, because the law on administrative review permits me only to review the record and not the facts supporting that.

Altough if I considered the facts, I consider them raising serious questions in the Court's mind by the plaintiff. I don't have, I don't think I have any jurisdiction of the administrative review to reverse the Merit Board.

STATE OF ILLINOIS)
) SS;
COUNTY OF C O O K)

I, JOSEPHINE RAINES, Official Shorthand Reporter of the Circuit Court of Cook County, County Department- Law Division, do hereby certify that I reported in shorthand the evidence had in the above-entitled cause and that the foregoing is a true and correct transcript of all the evidence heard.

/s/
JOSEPHINE RAINES
Official Shrthand Reporter
Circuit Court of Cook County
County Department-Law Division.

END OF DOCKET